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ELECTRONICALLY FILED
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5 UNITED STATES BANKRUPTCY COURT

6 FOR THE DISTRICT OF NEVADA

7 * * *

8 IN RE:
YON CHU LAN
9 JOSEFINA LAN

Case No. BK-N-09-51087-GWZ
(Chapter 13)
OPPOSITION TO DISMISSAL
Hearing Date: 6-12-09
Hearing Time: 2:00 p.m.
Time Required: 5 Minutes

10
11 Debtors.

12 /

13 COMES NOW, the debtors, by and through their attorney, Sean P.
14 Patterson, Esq. and oppose the HSBC Bank USA's (hereinafter
15 "Movant") Motion for Relief from Stay. This opposition is brought
16 pursuant to the Points and Authorities included herein, and on
17 further oral argument of counsel as may be presented at the time of
hearing.

1 POINTS AND AUTHORITIES

2 I. FACTS

3 This case was filed on or about April 15, 2009. The plan was
4 filed on the same day. The case was filed to allow the debtors to
5 reorganize their unsecured debt, and "strip" the second mortgage
6 off their residence. The plan was confirmed on July 24, 2009.

7 The debtors have had income problems since the case was filed.
8 The debtors work in the Casino business, and they have lost some
9 hours since the case was filed. The debtors are trying to do a
10 "workout agreement" with this creditor.

11 This is Mr. & Mrs. Lan's personal residence. The debtors are
12 not selling this house, they are sincerely trying to save this
13 house.

14 II. LEGAL ARGUMENT

15 To obtain relief under 11 USC §362(d)(1) the court can grant
16 relief for "cause". The Bankruptcy Code is silent with respect to
17 the definition of "cause". However, courts have held that "cause"
18 can be demonstrated by a debtor's continued failure to make
19 payments to a secured creditor. In re Wright, Egan, & Associates,
20 60 B.R. 806, 807 (E.D. Pa. 1986); In re Smith, 94 B.R. 216 (Bankr.
21 M.D. Ga. 1988).

22 To obtain relief under 11 U.S.C. §362(d)(2) a creditor must
23 make a **prima facia** (emphasis added) case that (1) the property is
24 over-encumbered, and (2) it is not necessary for an effective
25 reorganization. In re Elmore, 94 B.R. 670 (Bkrtcy C.D. Cal. 1988).
26 A debtor's principal residence in a Chapter 13 case is virtually
27 always necessary to an effective reorganization... if the home is
28

1 not saved, the reorganization is not effective. Elmore at 673.

2 As to the §362(d)(1) argument, counsel has confirmed that the
3 debtor are not current on the payments. However, the debtors
4 related to counsel that they are trying to do a workout agreement
5 on this mortgage. Counsel shall provide proof of this fact when he
6 receives it from the debtors.

7 This property is the Lan's residence. The debtors do not have
8 equity in the property. Nevertheless, the bankruptcy was filed to
9 protect the residence. The debtors would like to avoid the cost of
10 a foreclosure and lose their residence.

11 A secured claim holder has the burden of proving the
12 reasonableness of its fee claim, whether under §506(b) or under
13 §1322. In re Atwood, 293 B.R. 227, 233 (9th.Cir.BAP 2003). The
14 creditor has failed to provide any evidence of attorney time in its
15 motion. Thus, any attorneys fees requested in this motion should
16 be disallowed.

17 The creditor can not make as Prima facie case that this
18 property is over-encumbered **and** that it is not effective for a
19 reorganization. For the reasons aforementioned, the debtor asks
20 that the Motion be denied and the attorneys fees and costs denied.
21 In the alternative, continue this motion for 60 days to allow the
22 debtors to do a workout agreement with this creditor.

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In the event that the court does not deny this motion, that an order of "Adequate Protection" be entered into by the court. The debtors would like 6 months to bring the post-petition payments current with this creditor.

Respectfully Submitted this 18th day of November, 2009.

/s/ SEAN P. PATTERSON, ESQ.
SEAN P. PATTERSON, Esq.

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, Rule 5(b),
I hereby certify that I am an employee of the law firm of **SEAN P.**
PATTERSON, 232 Court Street, Reno, Nevada 89501; and that on this
date, I mailed a true and correct copy of the foregoing document
via the United States mail, postage prepaid to:

Yon & Josefina Lan
1475 Hagar Rd.
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This document was sent via electronic mail to:

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DATED: November 18, 2009

/s/ Sean P. Patterson
SEAN P. PATTERSON, ESQ.